



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 28 2003

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. James R. Walpole
General Counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Washington, D.C. 20230

Dear Mr. Walpole:

Thank you for your letter of August 14, 2003 to Acting Administrator Marianne Horinko, requesting the Environmental Protection Agency's (EPA's) comments on the administrative appeal that the Islander East Pipeline Company (Islander East) brought before the Secretary of Commerce pursuant to the Coastal Zone Management Act (CZMA). The appeal requests the Secretary to override the State of Connecticut's objection to Islander East's proposed natural gas pipeline that would extend from an interconnection with an existing pipeline near North Haven, Connecticut, to a terminus on Long Island, New York. I have enclosed the following three EPA comment letters from EPA's New England Regional Office on the proposed project that were previously submitted under the National Environmental Policy Act (NEPA) and Clean Water Act (CWA) section 404 permitting requirements:

September 5, 2003 comment letter to the New England Division of the Army Corps of Engineers regarding Islander East's modified CWA § 404 permit application;

September 30, 2002 comment letter to the Federal Energy Regulatory Commission (FERC) on the final Environmental Impact Statement (EIS); and

May 21, 2002 comment letter to FERC on the draft EIS and the CWA § 404 permit application package.

We believe that the enclosed letters may be relevant to the Secretary's decision, particularly with respect to the coastal effects of this project and the determination of whether there are reasonable alternatives available that would permit the proposed activity to be conducted consistent with Connecticut's coastal zone management policies.

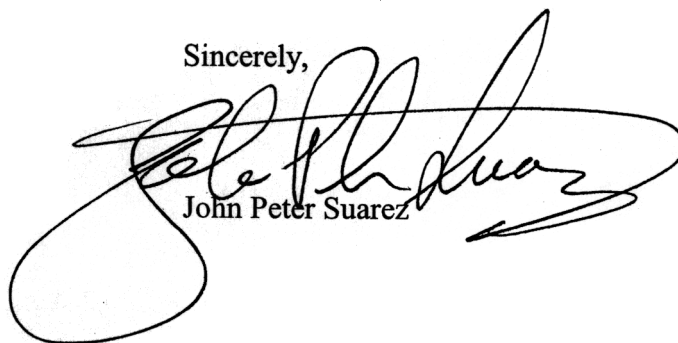
Under the CWA § 404 permitting program, no discharge of dredged or fill material may be authorized if a practicable alternative exists that is less damaging to the aquatic environment. As explained more fully in the enclosed letters, Islander East has not demonstrated that its

modified preferred alternative represents the "least environmentally damaging practicable alternative" for CWA § 404 purposes. Further, Islander East must improve its alternatives analysis, and a variety of alternative routes should be evaluated before a final "least environmentally damaging practicable alternative" determination can be made. Specifically, the applicant should provide a detailed evaluation of alternatives that follow less environmentally sensitive routes, such as alignments adjacent to existing gas, electric, or telecommunication lines, or in other previously disturbed areas; along dredged or maintained channels; that avoid concentrated shellfish habitat, harvesting areas, or other important near-coastal resources; through areas of low benthic biodiversity; and that traverse areas of relatively low water quality. Moreover, even considering currently available information, practicable alternatives to the Islander East proposal exist (e.g., the Eastern Long Island Extension) that would less adversely impact the aquatic environment.

The alternatives test under Section 404 of the CWA closely, although not identically, resembles the alternatives determination that the Secretary must make in determining whether to override a state's consistency objection. In this case, Islander East has not completed an acceptable alternatives analysis pursuant to CWA § 404. We recommend that your final decision reinforce that Islander East prepare a thorough and complete alternatives analysis, consistent with previous comments that EPA submitted.

Thank you again for the opportunity to comment. If you have any questions on the enclosed letters, please feel free to contact me or Carl Dierker, Regional Counsel for EPA's New England Regional Office at (617) 918-1091.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "John Peter Suarez". The signature is written over the printed name and extends upwards and to the left, with a large loop at the bottom left.

John Peter Suarez

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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OFFICE OF THE
REGIONAL ADMINISTRATOR

May 21, 2002

Magalie Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20425

RE: Islander East Pipeline Project Draft Environmental Impact Statement Docket No. CP01-384-000 and CP01-387-000 (EPA ERP # FRC-B03010-00)

Dear Ms. Salas:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA), Section 404 of the Clean Water Act and Section 309 of the Clean Air Act we have reviewed the Draft Environmental Impact Statement (DEIS) for the proposed Islander East Pipeline Project proposed by the Islander East Pipeline Company, L.L.C. and the Algonquin Gas Transmission Company (Algonquin).¹

According to the DEIS, the Islander East Pipeline Company (Islander East) proposes to construct 50 miles of new 24-inch diameter pipeline in various locations between Connecticut and Long Island, New York. The project includes a 22.6 mile crossing of Long Island Sound (LIS) and other associated ancillary facilities including three meter stations and five main line valves. The project is presented as a means to provide natural gas transmission from supply areas in the northeast to energy markets in Connecticut, Long Island, and New York City.

EPA believes that appropriately sited natural gas transmission and power generation infrastructure play a vital role in ensuring rational and environmentally sound new generation capacity. Substantial new natural gas generation capacity has been approved recently by EPA and the states in the northeast, plants that are substantially cleaner and thus represent a 'win' for the environment and the energy needs of the northeast.

Natural gas pipelines play a key role in ensuring reliable energy capacity, and as such it is important that these projects are routed in the least environmentally sensitive location and receive thorough but prompt environmental reviews. The DEIS presents and asks for comment on four system alternatives: the One-Pipe System Alternative and the ELI System Alternative both based on Iroquois' ELI Extension Project; the Long Island System Alternative; and Tennessee's

¹ EPA New England (EPA) plans to submit additional formal Clean Water Act Section 404 comments in response to the Corps of Engineers' public notice when it is issued.

Connecticut-Long Island Lateral Project. The DEIS also states that one goal of the analysis is to consider "the enhancement of competitive transportation alternatives," and "the avoidance of unnecessary disruptions of the environment". Based on the information presented in the DEIS it is not clear that the current project does either. As part of this effort we agree with the DEIS that both the Iroquois and Tennessee projects should be evaluated and considered as alternatives.

Construction of the pipeline on land in Connecticut and Long Island will impact a total of 314 acres while offshore work in LIS will impact 221 acres. As proposed the pipeline would cross 43 wetlands and 14 waterbodies and will "temporarily disturb" 32.5 acres of wetland (81 percent of which is forested) during construction. Moreover, construction of offshore portions of the pipeline would disturb subtidal benthic habitat through trench excavation, sidelaying of trench spoil and associated sedimentation and construction barge anchor cable sweep.

EPA provided scoping comments to the Federal Energy Commission (FERC or the "Commission") in November, 2001 to identify important issues that should be addressed as part of the EIS analysis. Our comments indicated that the scope of issues identified in the Notice of Intent was a good start and that particular focus should be directed toward a complete analysis of: project alternatives; wetland impacts and associated mitigation; direct, indirect and cumulative impacts to LIS resources; construction techniques; and water supply resources. Unfortunately, the DEIS fails to provide the type of rigorous analysis required under NEPA to fully evaluate and consider the relative impacts of the alternatives or to support informed decision-making regarding the project. We believe additional information about the alternatives with regard to their impacts to the marine environment, wetlands, drinking water supplies and mitigation must be provided in order to fully evaluate the environmental acceptability of the proposed project. Our comments below and in the attachment describe our specific concerns about the project, identify outstanding information deficiencies and make suggestions about how the NEPA process should proceed from this point forward.

Purpose and Need and Analysis of Alternatives:

- **The project purpose and need (and later, during the Clean Water Act (CWA) § 404 permitting process, basic project purpose) must be clarified.** As part of the alternatives analysis, the DEIS considers scenarios where one, two or some combination of gas pipeline systems are put in place to address the project purpose and need. The DEIS states that these alternatives are considered because the Commission has not yet determined whether Algonquin and Iroquois are competing projects. However, the project must be driven by a defined need (i.e. a demand for a given quantity of natural gas in NY). The "One Pipe" alternative and the "two system" alternative each nearly double the volume of gas delivered by the system under consideration and increase the environmental impacts because two transmission pipelines instead of one would be built; but the DEIS does not explain the need for such a large quantity - much greater than the demand estimations of either Algonquin or Iroquois.

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reduced potential to impact the environment. Unfortunately, no concrete conclusions can be drawn about this alternative, because nothing but the most rudimentary comparison of environmental impacts is provided, coupled with glaring omissions of important environmental data (size and location of wetlands impacts, wetlands functions and values, water quality impacts, fish and wildlife resources associated with streams, amounts and types of wildlife habitat impacted, etc.). Again, the DEIS then states that FERC does "not have sufficient information to recommend the ELI system."

Wetland Impacts:

The DEIS lacks the detailed information necessary to conduct an adequate review of the environmental impacts associated with the proposed project. This deficiency includes a lack of detailed information on the locations or functions and values of the wetland systems impacted as well as an insufficient analysis of alternatives to the proposed project as required by both NEPA and CWA § 404(b)(1). In addition, no detailed information is presented on the location, size or quality of the specific wetlands systems impacted, or about the ecological or other functions and values exhibited by those systems.

More information should be provided to describe potential modifications of alternatives presented (e.g. route variations) to avoid and minimize impacts to the aquatic ecosystem. EPA recommends that reductions in the width of rights-of-way along the route be pursued to the greatest extent practicable to reduce adverse environmental impacts. A clear explanation of how the sizes for reduced rights-of-way are established would also be of great value as part of this process. Finally, in instances where sensitive resources are identified that cannot be avoided, the use of horizontal directional drilling (HDD) should be seriously considered as an appropriate construction technique to minimize wetland impacts.

Marine Impacts:

The DEIS does not contain enough specific information to fully understand the potential for marine impacts. The lack of site specific baseline information along the pipeline route is a primary factor in this regard that further limits the value of the DEIS as a tool to understand the potential effects of construction and operation of the proposed project. For example, the DEIS (pg 3-43) mentions that site-specific computer modeling to quantify the impacts of sediment displacement and related turbidity and current changes is currently underway. Although we raise several specific comments related to similar information voids below, we also recommend that the National Marine Fisheries Service input related to this, and other marine issues, be given serious consideration as part of FERC's efforts to develop supplemental information.

The DEIS is constrained by a lack of specific sediment chemistry (information about the toxicity of marine sediments) along the proposed pipeline route. Although some sediment chemistry data is provided in Appendix H of the DEIS, it is unclear where the

samples were collected and at what depth. Moreover, the analysis lacks a discussion of the potential for resuspension of sediments contaminated with organics, and related impacts, during the construction phase of the project. The analysis does incorporate a discussion of contaminant loads and sediment contaminated with heavy metals but no discussion of the effect on habitat of sediments contaminated with PCBs and PAHs. This lack of specificity, in combination with the lack of an evaluation of existing and/or historical dredge material disposal sites and whether they would be affected by the proposed marine route makes it difficult to understand the potential impact of construction in these sediments and whether effective mitigation is possible. Specifically, it is not clear if the pipeline has been rerouted to avoid the Central Long Island dredged material site. Navigation coordinates for the pipeline in the vicinity of the disposal site would also be helpful.³

Mitigation measures are an essential component of the project. As was the case with another pipeline in the marine environment that we recently reviewed, the Hubline project in Boston Harbor, EPA is concerned with the magnitude of the marine impacts associated with construction of the project. The potential for impacts depends on a number of factors, including the route that is selected, the presence or absence of contaminated sediments along the route, and whether resources are present on the bottom and in the water column that would be impacted. After the impacts are fully documented, EPA urges FERC and the applicant to participate in an open dialogue with the relevant state and federal regulatory agencies on the issue of compensatory mitigation as soon as possible, and prior to the publication of any subsequent NEPA document. EPA looks forward to participating in those discussions.

EPA agrees with the FERC recommendation that contingency plans should be identified for instances where Horizontal Directional Drilling (HDD) fails. In addition to the development of a contingency plan, the EIS should describe the criteria which will be used to determine directional drill failure. It may be appropriate to consider directional drill failure criteria established for other projects as appropriate models for this project. In addition, the contingency plans should identify which agencies will be informed of the failure and that the contingency plan will be pursued.

Water Supply

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- **EPA supports FERC's call for pre and post construction monitoring of public and private wells along the pipeline route.** Well yield and water quality information will be of great value as part of the work to monitor potential construction impacts associated with the pipeline. The analysis should also provide information to explain the mechanisms that
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³ We acknowledge and appreciate FERC's request to Islander East to file site-specific contaminated sediment studies for portions of LIS with federal and state agencies; however, we maintain that this information should have been provided in the DEIS, not in correspondence outside of the NEPA process.

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typically exist to resolve complaints related to changes in well yield or water quality.

Conclusion/Rating

The DEIS identifies a number of instances where there is insufficient information to recommend an alternative or to fully understand its potential to cause impacts. It is clear that there is not enough information available at this point for FERC to take any action or even to recommend a preferred alternative. This is an unfortunate yet avoidable situation that leads us to recommend that FERC address outstanding deficiencies and increase the ability of the NEPA process to support informed decision-making through the preparation of a supplemental analysis that is made available for review and comment in advance of the preparation of a FEIS.

We believe additional information with regard to impacts to the marine environment and to drinking water supplies as well as mitigation must be provided in order to fully evaluate the environmental acceptability of the proposed project.

For the reasons discussed above (and in the attachment which follows), EPA has rated this EIS "EC-2 Environmental Concerns-Insufficient Information" in accordance with EPA's national rating system, a description of which is attached to this letter. We look forward to reviewing responses to the issues and concerns highlighted in this letter and technical attachment in a supplemental document and my staff is available to provide additional input, as necessary, to help FERC develop a supplemental analysis. Please feel free to contact me or Timothy Timmermann of the Office of Environmental Review at 617/918-1025 if you wish to discuss these comments further.

Sincerely,



Robert W. Varney
Regional Administrator

Attachment

**Additional Detailed Comments on the Islander East Pipeline Project
Draft Environmental Impact Statement**

Wetlands

Right-of-Way Impacts

The DEIS states that "forested wetlands would be crossed adjacent to existing rights-of-way, where actual forest clearing would be less than 75 feet because the partial use for construction of 25 to 50 feet of the previously cleared right-of-way for construction." This technique should be applied to both wetland and upland, as upland vegetative losses would, among other things, have an indirect adverse impact on the aquatic ecosystem through loss of wildlife habitat, increased potential for infiltration of invasive species, and adverse impacts on water quality. It is also not clear exactly how the dimensions of the reduced rights-of-way (ROW) are chosen, and whether they could be further reduced in width. ROW width must be minimized to the greatest extent practicable to reduce adverse environmental impacts.

Functions & Values Assessment

The DEIS does not contain any detailed information on the locations or functions and values of the wetland systems impacted. Specific wetland impact areas are identified in Table 3.7.1-1, but with only the Cowardin classification and the size of the direct impact, along with some limited, general discussion of wetland characteristics in the text of the document. Furthermore, discussion of impacts is limited primarily to direct impacts, with little or no discussion of indirect and secondary impacts.

Delineation

It appears that much of the estimation of wetland impacts presented in the DEIS is based solely on National Wetland Inventory (NWI) mapping or aerial photography. Estimations made using NWI maps or aerial photography must be field verified using the Corps of Engineers methodology. To that end, it would be helpful if Corps wetland data sheets should be provided as an appendix to the EIS. Moreover, photographs (on-site and aerial), if available, of impact areas would be a useful tool to understand impacts.

Impacts

Detailed maps of the proposed routes showing wetland impact areas are not provided. Instead, low resolution overviews of planned routes are provided which fail to show approximate wetland locations. Project components including temporary work spaces, access roads, and above ground facilities are identified in the DEIS as actions that would result in wetland impacts. It is not clear, however, whether these components were included in the estimation of wetland impacts. If they were the EIS should describe how. It is also unclear whether property access restrictions along ten percent of the alignment affected the calculation of wetland impacts.

Stream crossings

The DEIS states that the proposed project will cross 14 streams (12 in Connecticut). The Connecticut onshore portion of the pipeline will pass through the Quinnipiac Watershed. All of the streams crossed are Class A coldwater fisheries, with the exception of two rivers (the Muddy and Branford Rivers) which are classified B/A coldwater fisheries. At least two of the crossings will affect streams (Farm River and Stony Creek) known to support anadromous fisheries. Other than the water quality classification, identification as coldwater or anadromous fisheries, and some general descriptive language about the watershed, the DEIS is characterized by a lack of information regarding the quality of the streams, fish and wildlife use of the streams, etc. at the specific impact areas. This lack of information makes it difficult to discern the potential for impacts due to construction.⁴ In addition, detailed maps and diagrams showing impact areas are not provided.

On page 3-29 the DEIS states that Islander East has proposed a variance to sidecast spoils into "intermediate" water bodies greater than 30 feet in width. The DEIS points out that none of the stream crossings are this wide. If that is the case, then EPA sees no reason for such an allowance to be specified, and agrees that no such variance should be granted. Furthermore, if stream widths are for some reason underestimated, and widths in excess of thirty feet are encountered, EPA would oppose the allowance of sidecasting spoils into the stream, due to the avoidable and adverse environmental impacts that could result.

Mitigation

Page 3-76 of the DEIS recommends that post construction reports should be filed for the first three years or until each wetland is "successfully revegetated." Given the extended time frame expected for complete revegetation, a monitoring period of greater than three years is warranted, especially in the forested wetland areas. A minimum of five years of monitoring should be required, with additional requirements that corrective actions be taken to address unsuccessful revegetation. In addition, invasive species should be addressed in a comprehensive mitigation plan that includes monitoring and specific actions necessary to remove invasives. EPA would like to be included in the group of resource agencies reviewing any wetland mitigation or revegetation plans. The current list provided in the DEIS does not include EPA.

⁴ Potential impacts from stream crossing and construction activities (e.g. clearing and grading of stream banks, blasting, instream trenching, trench dewatering and backfilling) include the loss of vegetative buffer, streambank erosion, destruction or modification of aquatic habitat, increased sedimentation and turbidity (and the resultant reduction in light penetration), decreased dissolved oxygen, increased water temperatures, release of chemical and nutrient pollution loads from sediments, as well as the potential for pollution from fuel spills or other chemical contamination from construction activities.

Pine Barrens/Land Trust Land Impacts

EPA encourages close coordination between FERC, the applicant, the three identified land trust organizations and the Pine Barrens Commission to develop acceptable construction and mitigation plans. In those instances where impacts are anticipated, agreements should be developed to address how impacts will be minimized and what mitigation measures will be necessary. Based on the information provided in the DEIS, EPA believes the Pond Variation proposal to avoid impacts on property owned by the Franford Land Trust warrants further attention.

Marine Issues

Sediment Chemistry

The DEIS utilized §305(b) and §303(d) water quality reports and fish consumption advisories as a means to determine whether contaminated sediments are present in the vicinity of the proposed waterbody crossings. Because these reports represent a first cut analysis, a review of studies and sediment chemistry information from other projects (such as dredging projects) in the vicinity of the proposed project should be factored into the analysis.

We suggest that FERC review several reports published by the Corps of Engineers as part of the Disposal Area Monitoring System (DAMOS) which describe both sediment chemistry and recolonization patterns in contaminated sediments following disposal in Long Island Sound. These reports may be useful as part of the work to determine what impacts sediment resuspension would have on the environment in and adjacent to the construction area.

Resources

The DEIS reports that Islander East is in the process of collecting benthic data as part of the evaluation of marine benthic organisms along the pipeline route. This information is relevant to the discussion of project impacts and should be made available as part of the supplemental NEPA analysis provided for review and comment in advance of the publication of a FEIS.

The EIS should include a specific discussion of how state and federal agency comments and concerns offered on the project regarding EFH-designated species and other marine issues will be addressed.

Construction Impacts

The DEIS should include a discussion of impacts associated with delays should the project encounter complications. For example, the discussion does not describe what effects are

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likely to occur should the submarine trench remain "open" longer than expected (in this instance, one concern might be that lobsters may be more likely to burrow in the newly suspended sediment and then be impacted when the trench is backfilled).

It appears the HDD will begin offshore and extend into LIS. The analysis should explain how contaminated materials (from the nearshore environment) will be contained and removed since drilling seaward may displace toxic sediments and fluids that may settle on the ocean floor.

It is not clear why a 40 foot wide x 8 foot deep trench would be necessary to install a pipeline that measures 24 inches in diameter.

The DEIS explains that blasting would directly disturb and destroy submerged aquatic vegetation (SAV), shellfish, and benthic macroinvertebrates but that the habitats would recover over the short-term to support these species once again. In fact, most SAVs do not recover from these types of impacts quickly, if at all, resulting in long-term impacts to species that use this habitat. The supplemental analysis should provide additional information to support revegetation claims advanced in the DEIS.

Pipeline construction should be staggered by location and time of year to reflect input from state and federal agencies concerning "construction windows" to protect species and habitat during critical life stages.

EPA supports efforts to fully bury the pipeline as it crosses LIS in a manner that reestablishes preconstruction substrate conditions along the pipeline corridor. If this is not possible, the analysis must more fully discuss the impacts associated with a partially to fully exposed pipeline. The discussion should also include mitigation measures to account for the potential long term loss of productivity of benthic habitat affected by the project.

Spill Prevention Control and Countermeasure Plan (SPCC)

Recommendations

We recommend the following procedures for Class I (Water Utility owned lands) and Aquifer Protection (Level A and Level B) delineated areas:

~~The applicant should be required to coordinate closely with the appropriate state agencies~~ prior to any field activities. Surficial drinking water supplies are regulated by the Connecticut Department of Public Health (CT DPH) and aquifer protection areas are regulated by the Connecticut Department of Environmental Protection (CT DEP). Although the separation distances and values cited in this plan may reflect standard criteria we recommend that these distances and values be the subject of specific coordination with the CT DEP so as to provide the best level of protection in all situations.

FERC and the applicant shall recognize state requirements and regulations that require

notification of the appropriate Water Utility of activities which will occur within Class I Watershed or aquifer protection area wellhead boundaries. Also, in the event of a release within Class I Watershed or aquifer protection area wellhead boundaries the Water Utility should be notified immediately.

No storage of contaminants should be allowed in Class I Watershed or aquifer protection area wellhead boundaries.

Refueling and maintenance of equipment and transferring of liquids should be conducted outside of Class I Watershed or aquifer protection area wellhead boundaries.

Emergency Response Procedures

By law the CT DEP regulates the storage, transport and disposal of hazardous wastes. As part of this role the CT DEP responds to and provides oversight for emergency response and remediation of hazardous material spills. The SPCC should be revised to clearly indicate that spills should be reported to the Haz/Mat Spill Response Program in the CT DEP simultaneously with any other notifications provided. Also, in the event of a spill in a Class I Watershed or a aquifer protection area wellhead boundary the Haz/Mat Spill Response Program and the Water Utility should also be notified. The SPCC should also be supplemented to describe the criteria and associated thresholds the Chief Inspector would use to determine if a release requires reporting to regulatory agencies and to reflect that all hazardous substance releases are to be reported to the Haz/Mat Spill Response Program.

ADC - 4

Summary of Rating Definitions and Follow-up Action

Environmental Impact of the Action

LO--Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC--Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO--Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative. EPA intends to work with the lead agency to reduce these impacts.

EU--Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1--Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2--Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3--Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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September 5, 2003

Christine Godfrey
Chief, Regulatory Division
New England Division
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Re: Algonquin Gas Transmission Co. and Islander East Pipeline Co.
File No. 2001-03091

Dear Ms. Godfrey:

This letter concerns the application of Algonquin Gas Transmission Co. and Islander East Pipeline Co. for a Corps of Engineers permit under Section 10 of the Rivers and Harbors Act of 1899 (RHA) and Section 404 of the Clean Water Act (CWA) to construct a new interstate natural gas compressor station, and to construct and operate approximately 49.9 miles of new 24" natural gas pipeline starting at North Haven, CT and terminating at planned power plants in Brookhaven and Calverton NY, including a 22.6 mile crossing of Long Island Sound.

The pipeline, as proposed, will impact 18 waterbodies, 55 wetlands and Long Island Sound. The onshore segment of the proposed pipeline will cross 27.3 linear miles of lands in Connecticut and New York, and the offshore segment will cross approximately 22.6 linear miles of submerged lands within the Sound. Approximately 22.9 acres of wetlands are proposed to be impacted in association with pipeline right of way construction, and approximately 8 acres of wetlands are proposed to be impacted as the result of permanent pipeline right of way maintenance.

Benthic habitat impacts in Long Island Sound associated with the proposed project include 7.3 acres impacted by anchor strikes, 2,307 acres impacted by anchor cable sweep, 1.5 acres of impacts from dredging, 183 acres impacted from plowing and burial operations, 10.5 acres impacted by the horizontal directional drill (HDD) exit hole, and 0.4 acres impacted for pipeline stabilization, for a total of 2,519.7 acres.

In our letter to the Corps dated July 1, 2002, EPA presented comments on the application for a Corps permit under CWA §404 and RHA §10, after reviewing the Corps' May 31, 2002 Public Notice, the §404 application package, and the Draft Environmental Impact Statement (DEIS) for the project issued by the Federal Energy Regulatory Commission (FERC). EPA submitted separate comments on the DEIS in a letter to FERC dated May 21, 2002, and on the Final EIS in

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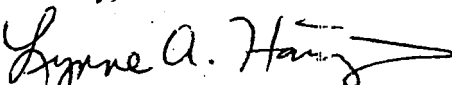
a letter to FERC dated September 30, 2002. EPA's previous comments on the project as described in the DEIS and FEIS, and with respect to the §404 and the §10 application, are incorporated by reference in this letter.

Since the time that EPA presented the above-referenced comments, the applicant has modified the proposed project in an effort to reduce environmental impacts associated with its preferred alternative. On July 3, 2003, the Corps issued a notice of a public hearing and requested public comment on the project proposal in its current configuration. The purpose of this letter is to update EPA's previous comments to account for the changes in the project proposal (see enclosure).

In summary, we recognize that the applicant has recently proposed construction techniques to minimize project impacts from its preferred alternative, although we would expect such techniques to be employed for all alternatives. However, the applicant still has not demonstrated that the modified preferred alternative represents the least environmentally damaging practicable alternative. Furthermore, the alternatives analysis is incomplete. Despite the lack of a complete analysis and even after considering the reductions in the impacts associated with the modified preferred alternative, it appears that practicable alternatives to the Islander East proposal exist which would result in less adverse impact to the aquatic environment. Therefore we believe that the proposed project has failed to satisfy the §404(b)(1) guidelines and it does not qualify for §404 permit issuance.¹

I appreciate the opportunity to comment on this project. Of course, EPA reserves the right to provide additional comments as new information becomes available. If you have any questions, please contact Michael Marsh of my staff at (617)918-1556. Thank you very much.

Sincerely,


Lynne A. Hamjian, Manager
Connecticut State Program Unit

Enclosures

cc: Greg Mannesto, USFWS
Mike Ludwig, NMFS
Susan Jacobson, CTDEP/OLISP
Bob Gilmore, CT DEP

¹We also note that the effect of CTDEP's objection to consistency certification is to prevent the Corps from issuing the §404 and §10 permits unless and until such objection is overturned or withdrawn. Similarly, if CTDEP denies §401 water quality certification, as it is proposed to do, the Corps would be prevented from issuing the federal permits.

ENCLOSURE

EPA Comments on the Algonquin Gas Transmission Company Islander East Pipeline Project

Changes in Construction Techniques

Construction techniques proposed by the applicant to reduce impacts include: the removal and open water disposal of trench sediment, rather than sidecasting and bottom stockpiling; the backfilling of the trench with new material consisting of bank run gravel, rather than previously sidecast native material; the reduction in length and width of trench from the HDD exit hole to approximately milepost 12; and, a reduction from four to three passes of the subsea plow for trenching and pipe installation (beyond milepost 12), resulting in proportionately less benthic impacts due to anchor and cable sweep scarring.

EPA recognizes the applicant's efforts to reduce impacts associated with its preferred alternative. However, the applicant has not demonstrated that the modified preferred alternative represents the least environmentally damaging practicable alternative, or LEDPA, as defined below.

EPA's §404(b)(1) guidelines (40 CFR 230) set forth the environmental standards which must be satisfied in order for a §404 permit to issue. Two key provisions of the guidelines are critical when considering the proposed project. First, the guidelines generally prohibit the discharge of dredged or fill material if there exists a practicable alternative which causes less harm to the aquatic ecosystem. A discharge of dredged or fill material is prohibited if there "is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem so long as the alternative does not have other significant adverse environmental consequences." [40 CFR 230.10(a)]. This fundamental requirement of the §404 program is often expressed as the regulatory standard that a permit may only be issued for the "least environmentally damaging practicable alternative" or LEDPA. Furthermore, where the project is not water dependent and involves fill in wetlands and other special aquatic sites (as is the case here), practicable and less environmentally damaging alternatives are presumed to exist unless clearly demonstrated otherwise. The burden to demonstrate compliance with the alternatives test and rebut the presumptions rests with the applicant. The second key provision of the §404(b)(1) guidelines prohibits issuance of a permit if the discharge would cause or contribute to significant degradation of waters of the United States [40 CFR 230.10(c)].

Alternatives Analysis

In our previous comment letters on the DEIS and the CWA §404 application, we noted that an alternatives analysis must be conducted under CWA §404 (b)(1), to determine the LEDPA. We cautioned that unless a significant amount of additional detailed information were gathered and presented on the project alternatives, this effort would be constrained by the lack of meaningful data on which to base an evaluation of environmental impacts. Unfortunately, the additional information provided to date by the applicant, including the updated alternatives analysis submitted by the applicant in its letter to the Corps dated July 15, 2003, does not present an

important environmental resource. EPA concurs that the applicant must provide a detailed evaluation of alternatives that follow less environmentally sensitive routes, such as: alignments adjacent to existing gas, electric or telecommunication lines or in other previously disturbed areas; alignments along dredged or maintained channels; alignments which avoid concentrated shellfish habitat, harvesting areas or other important near-coastal resources; alignments through areas of low benthic biodiversity; and, alignments which traverse areas of relatively low water quality.

The alternatives analysis must provide a detailed description of the resources associated with each of the alternatives considered, and the resultant adverse environmental impacts associated with the construction and operation of each alternative. In addition, all alternatives should be evaluated using the same kinds of new construction techniques proposed for the preferred alignment to reduce impacts, so that fair comparisons between alternatives can be made. In the applicant's July 15, 2003 alternatives analysis, the preferred alternative and the ELI and C-5 alternatives were inconsistently compared in terms of environmental impact. The reductions in impact associated with the newly proposed construction techniques (such as reducing the number of barge passes, disposing of trench sediments at a remote location rather than sledding, etc.) should be applied to each of a full range of alternatives, including the ELI alternative, to appropriately compare the relative potential impact of each alternative.

Significance of Impacts

In its letter of July 29, 2003, CTDEP concluded that "the activities as proposed by Islander East in the proposed location would cause significant adverse impacts to coastal resources and water-dependent uses, and would, therefore, be inconsistent with the enforceable policies of the Connecticut CZMP." CTDEP went on to object to Islander East's consistency certification in accordance with 15 CFR §930.63 (b). Furthermore, CTDEP, on August 5, 2003, issued a notice of its tentative determination to deny state water quality certification for the proposed project, pursuant to §401(a)(1) of the CWA.

While these determinations do not of themselves compel a finding under 40 CFR §230.10(c) that the preferred alternative would cause or contribute to significant degradation of waters of the United States, they highlight the substantial impact associated with the preferred alignment and the importance of the resources impacted. As stated above, if the proposed project is determined to cause or contribute to significant degradation of waters of the United States under 40 CFR §230.10(c), no §404 permit can be issued for it. This further emphasizes the acute need for identification and detailed evaluation of alternatives to the preferred alignment, in the event that a permit cannot issue for the preferred alternative due to a determination that it fails the significance test of the 404(b)(1) guidelines.

Additional Information

In your May 21, 2003 letter to Islander East, the Corps included a list of additional information that is needed to complete the evaluation of the project proposal. EPA agrees on the need for the listed additional information, and requests that the applicant submit copies of their responses to EPA for review and comment. Specifically, the following information is requested, in accordance with the itemized list starting on page 5 of the Corps' May 21, 2003 letter:

Pipeline System Alternatives: items 1, 2, 3

Anticipated Future Needs: items 4, 5

Least Environmentally Damaging Practicable Alternative: item 6

Restoration: items 8, 9, 10

Minimization and Contingency Planning: items 11, 12

Wetland Impact and Long-term Monitoring: items 15, 16, 17

In addition, the applicant needs to develop a compensatory mitigation plan, with the goal of offsetting unavoidable impacts to wetlands and waters. While a detailed mitigation plan cannot be fully developed prior to the determination of the LEIDPA, the applicant should provide a conceptual plan, generally designed to offset the types of impacts anticipated to occur with the construction and operation of the types alternatives under consideration.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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BOSTON, MASSACHUSETTS 02114-2023

July 1, 2002

Christine Godfrey
Chief, Regulatory Division
New England Division
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Re: Algonquin Gas Transmission Co. and Islander East Pipeline Co.
File No. 2001-03091

Dear Ms. Godfrey:

This letter concerns the application of Algonquin Gas Transmission Co. and Islander East Pipeline Co. for a Corps of Engineers permit under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA) to construct a new interstate natural gas compressor station, and to construct and operate approximately 50.4 miles of new 24" natural gas pipeline starting at North Haven, CT and terminating at planned power plants in Brookhaven and Calverton NY, including a 22.6 mile crossing of Long Island Sound.

Construction of the pipeline on land in Connecticut and Long Island will impact a total of 314 acres while offshore work in LIS will impact 221 acres. As proposed, the pipeline would cross 43 wetlands and 22 waterbodies and will "temporarily disturb" 32.5 acres of wetland (81 percent of which is forested) during construction. Moreover, construction of offshore portions of the pipeline would adversely affect water quality, and disturb benthic habitat through trench excavation, sidecasting of trench spoil and associated sedimentation, and through the scraping of the floor of the Sound by the construction barge anchor cable.

EPA has reviewed the Corps' Public Notice, the §404 application package, and the Draft Environmental Impact Statement (DEIS) for the project, issued by the Federal Energy Regulatory Commission (FERC). EPA submitted comments on the DEIS in a letter to FERC dated May 21, 2002 (enclosed). EPA's comments on the project as described in the DEIS are incorporated here by reference as they pertain to the §404 permit application.

EPA's §404(b)(1) guidelines (40 CFR 230) set forth the environmental standards which must be satisfied in order for a §404 permit to issue. Two key provisions of the guidelines are critical when considering the proposed project. First, the guidelines generally prohibit the discharge of dredged or fill material if there exists a practicable alternative which causes less harm to the

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aquatic ecosystem. A discharge of dredged or fill material is prohibited if there "is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem so long as the alternative does not have other significant adverse environmental consequences." [40 CFR 230.10(a)]. This fundamental requirement of the §404 program is often expressed as the regulatory standard that a permit may only be issued for the "least environmentally damaging practicable alternative" or LEDPA. Furthermore, where (as here) the project is not water dependent and involves fill in wetlands and other special aquatic sites, practicable and less environmentally damaging alternatives are presumed to exist unless clearly demonstrated otherwise. The burden to demonstrate compliance with the alternatives test and rebut the presumptions rests with the applicant. The second key provision of the §404(b)(1) guidelines prohibits issuance of a permit if the discharge would cause or contribute to significant degradation of waters of the United States [40 CFR 230.10(c)].

In the §404 application package, section 2.5 (page 11), the applicant does not present a complete alternatives analysis. Rather, the application references the alternatives analysis conducted under the FERC application process and presented in the DEIS. EPA reviewed and commented on the alternatives analysis presented in the DEIS in our May 21, 2002 letter, which is enclosed. To summarize, we state that the analysis of system alternatives lacks detail necessary for an objective comparison of the relative environmental impacts of the alternatives. With the exception of the Tennessee Connecticut-Long Island lateral project system alternative, eliminated from further study because it would require 60 additional miles of pipeline, the DEIS repeatedly cites a lack of sufficient information to fully analyze the various alternatives being considered to meet the project purpose and need, as required by NEPA, or the basic project purpose as required by the CWA. In particular the DEIS cites a lack of sufficient information regarding the One-Pipe alternative (pg. 4-3), the Brookfield to Milford loop (pg. 4-13), the ELI alternative (and thus any combination alternative incorporating the ELI alternative) (pg. 4-18), and the Long Island System Alternative (pg. 4-19). In other words, effectively *all* of the system alternatives to the Islander East project presented in the DEIS (and referenced by the §404 application) are described as lacking sufficient information to be analyzed.

Furthermore, our DEIS comment letter noted that an alternatives analysis must be conducted under CWA §404 (b)(1), to determine the LEDPA. We cautioned that unless a significant amount of additional detailed information were gathered and presented on the project alternatives, this effort would be constrained by the lack of meaningful data on which to base an evaluation of environmental impacts. Unfortunately, no additional data has been presented regarding project alternatives, and therefore the applicant has failed to demonstrate that the proposed project represents the LEDPA and can qualify for a §404 permit.

EPA recently received a copy of the Corps' June 17, 2002 letter to FERC, commenting on the DEIS for the Islander East project. It states that after reviewing the alternatives analysis presented in the DEIS, the Corps concluded the following:

- ◇ "The analysis does not contain sufficient information to make a reasonable determination as to whether the proposed discharge will comply with the Guidelines."

- ✧ "The analysis fails to adequately compare the environmental impact of system alternatives to the proposal currently under consideration, allowing for a determination as to whether the need or demand for gas transmission to Connecticut and Long Island can be met in a less environmentally damaging manner."
- ✧ "The analysis, although incomplete, appears to suggest that the Eastern Long Island (ELI) system alternative would be practicable, shorter in length (both onshore and offshore), cross fewer streams, avoid designated shellfish beds, affect fewer residences and minimize trenching in the nearshore environment."

EPA strongly supports the Corps' findings regarding the alternatives analysis, and agrees with the Corps' summary conclusions, namely that the proposal fails to comply with the guidelines based on a lack of sufficient information to make a LEDPA determination; and, that there appears to be a practicable alternative that would have less adverse impact on the aquatic ecosystem. We would add that there may indeed be more than one other alternative with less adverse environmental impacts than the proposed project. Furthermore, with respect to compliance with the guidelines, it should be noted that any permissible project alternative must comply not only with the alternatives provision of the guidelines, but also may not cause or contribute to significant degradation of waters of the United States. The lack of detailed information on the environmental resources impacted by the various alternatives, including the proposed alternative, prevents the evaluation of the significance of those impacts on the aquatic ecosystem, and therefore precludes compliance with the guidelines.

In your June 17, 2002 letter, the Corps proposes an interagency coordination meeting to discuss the analysis of environmental impacts of the project alternatives. EPA supports this effort, and looks forward to participating in any upcoming discussions. I have enclosed some additional general comments on the proposed project. EPA will provide more detailed comments on the proposed project after a thorough analysis of the project alternatives and the associated environmental impacts is completed.

I appreciate the opportunity to comment on this project. If you have any questions, please contact Michael Marsh of my staff at (617)918-1556.

Sincerely,



Lynne A. Hamjian, Manager
Connecticut State Program Unit

Enclosures

cc: Greg Mannesto, USFWS
Mike Ludwig, NMFS
Bob Gilmore, CTDEP

Additional General Comments - Islander East Project

EPA submitted comments on the DEIS in a letter to FERC dated May 21, 2002 (a copy has been provided). EPA's comments on the project as described in the DEIS are incorporated here by reference as they pertain to the §404 permit application. The following are some additional general comments on the proposed project. EPA will provide more detailed comments on the proposed project after a thorough analysis of the project alternatives and the associated environmental impacts is completed.

A. Purpose and need, basic project purpose.

1. NEPA purpose and need and CWA §404 basic project purpose must be better defined. As part of the alternatives analysis referenced in the §404 application, the DEIS considers scenarios where one, two or some combination of gas pipeline systems are put in place to address the project purpose and need. The DEIS states that these alternatives are considered because the Commission has not yet determined whether Algonquin and Iroquois are competing projects. However, the project must be driven by a defined need (i.e. a demand for a given quantity of natural gas in NY). The "One Pipe" alternative and the "two system" alternative each nearly double the volume of gas delivered by the system under consideration and increase the environmental impacts, but the DEIS does not explain the need for such a large quantity - much greater than the demand estimations of either Algonquin or Iroquois.
2. The status of the planned power plants at Calverton and Brookhaven is not clear from the documentation. Is the need for the pipeline project dependent on the completion and operation of one or both of these facilities? If so, are they considered part of the single, complete project? Is the viability of these planned power plants dependent upon completion of the gas pipeline (i.e. could they operate without the presence of the new gas pipeline)?

B. Inland wetland and watercourse impacts.

1. The documentation focuses primarily on direct impacts to wetlands and the aquatic ecosystem. More detail is necessary on the indirect and secondary impacts associated with project alternatives.
2. The §404 application provides wetlands data sheets, and brief descriptions of the wetland areas that will be impacted by the proposed pipeline. However, the application does not present a detailed environmental assessment of the resources impacted, including the functions and values associated with the identified impact areas. Additionally, the environmental assessment must include detailed information on vernal pools which have been identified in the vicinity of

the project. Information on these resources, and on direct (e.g. filling) and indirect (e.g. destruction of adjacent wetland and upland habitat) impacts to these systems must be provided.

3. In Appendix G, the Connecticut Wetland Delineation Report and Addenda, estimations of pipeline crossing length of wetland areas are given, but estimations of the areal extent of the each impact area are not provided.

4. The §404 application indicates that the right of way (ROW) for the onshore portions of the pipeline will generally be 75 feet wide, but mentions that it will range from 25 to 100 feet. It is not clear what the minimum possible ROW width might be, or if the minimum width would vary throughout the project. Direct, indirect and secondary impacts must be minimized throughout the project. ROW widths wider than the minimum must be justified.

5. The application mentions that the ROW will be co-located along existing ROW for much of the project. The application needs more detail on the location of existing ROW, and on the new ROW in relation to the existing ROW.

6. Minimization of ROW width and associated impacts (such as vegetation clearing) should not be limited to areas within wetlands and waterbodies. Upland clearing of forested wildlife habitat, for example, can indirectly impact the aquatic ecosystem, and so should also be minimized.

7. The application states that the pipeline will cross 20 watercourses. However, insufficient detail is given on the location of these crossings, the impacts associated with each of the crossings, and the specific resources that will be impacted. Alternative, less damaging methods for stream crossing, including HDD, must be considered.

8. The application states that waterbodies will be crossed using one of four methods, including open cut (pg.14). However, no description of the open cut method or detail on locations where open cut installation will be used is given. Table 6 seems to indicate that open cut will not be used at all for stream crossings, rather that either flume or dam and pump methods will be used. The practicable alternatives which result in less environmental impact must be used.

9. Are the impacts associated with work in "extra workspaces" included in the estimations of impacts for the project? The impacts to the watercourses located in these extra workspaces needs to be detailed.

10. It appears that 6820 feet of the onshore route has not been delineated because the applicant cannot obtain access. (Table 2-1, Addendum II of the Connecticut Wetland Delineation Report). This information is necessary to evaluate impacts.

11. The application needs to provide more detail on the impacts associated with proposed staging areas for HDD rigs.

C. Marine impacts.

1. The documentation focuses primarily on direct impacts to the marine and benthic ecosystem. More detail is necessary on the indirect and secondary impacts associated with project alternatives. For example, indirect impacts would include the impediment to lobster migration that a partially buried pipeline would present. An example of secondary impacts would be the reduction of commercial shellfishing harvests due to losses of shellfish habitat from sedimentation.
2. Adequate detailed site specific baseline information has not been provided. Much more detailed site specific data on sediment chemistry and the biological resources potentially impacted by the proposed project must be provided for evaluation.
3. Site specific computer modeling analysis to quantify impacts associated with trenching operations must be completed and submitted for review. The analysis should include impacts to the water column (turbidity, release of toxic contaminants, potential violations of water quality standards and criteria, light impacts, etc.) as well as benthic impacts (sedimentation, toxicity, etc.).
4. More detail should be provided on offshore HDD exit pit impacts.
5. More detail on areas where the proposed pipeline will intersect with existing or planned utility crossings (MCI, Flag Atlantic, etc.) should be provided.
6. More detail should be provided on direct, indirect and secondary impacts associated with blasting operations.
7. Much more detail must be provided on the needed depth and width of the proposed trench.
8. More detail is needed on the post-construction benthic conditions associated with each of the trenching methods (jet or plow) and anchor and cable scars. Will depressions remain on the Sound floor? Will these depressions tend to be depositional areas? What will be the impact on benthic species population and diversity? Will there be adverse impacts on benthic organism migration patterns?



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OFFICE OF THE
REGIONAL ADMINISTRATOR

September 30, 2002

Magalie Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

RE: Islander East Pipeline Project Final Environmental Impact Statement Docket No. CP01-384-000 and CP01-387-000 (EPA ERP # FRC-B03010-110)

Dear Ms. Salas:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA), and Section 309 of the Clean Air Act we have reviewed the Final Environmental Impact Statement (FEIS) for the proposed Islander East Pipeline Project (IE) proposed by the Islander East Pipeline Company, L.L.C. (Islander East) and the Algonquin Gas Transmission Company (Algonquin).

The FEIS explains that Islander East proposes to construct 50 miles of new 24-inch pipeline and other facilities including meter stations and mainline valves in various locations along the alignment as it runs through Connecticut and Long Island Sound. Approximately 22 miles of the proposed pipeline is to be constructed across Long Island Sound. Algonquin proposes to uprate 27 miles of existing pipeline and to add a new compressor station along the pipeline route. As was the case in the DEIS, the project is presented as a means to provide natural gas transmission from supply areas in the northeast to energy markets in Connecticut, Long Island, and New York City.

EPA offered comments on the April, 2002 DEIS on a number of issues related to the rigor of the analysis of alternatives, the project purpose and need, wetland, marine and water supply impacts, and effects on land trust/conservation properties along the route. Since the publication of the DEIS, the Connecticut General Assembly passed legislation that establishes a one year moratorium, set to expire in June 2003, on the final approval of pipelines or transmission cables through Long Island Sound. In addition, the legislation establishes a task force to prepare and complete a comprehensive environmental assessment of the Sound's natural resources and requires that a regional energy study be conducted to identify future regional energy needs. The intent of that study is to more fully inform decisions made by regulators and legislators about the need for and location of additional transmission capacity. The project has been the focus of significant regional interest focused on the protection of the numerous marine resources of Long Island Sound. Numerous commentors, including the EPA, in comments on the DEIS,

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encouraged FERC to consider competing gas line projects such as the Iroquois' Eastern Long Island System Alternative (ELI) as alternatives to the Islander East project. Moreover, EPA and others questioned whether more than one project across Long Island Sound would be necessary to provide adequate gas supplies to Connecticut and Long Island.

The FEIS concludes that the ELI alternative is "environmentally preferable" to the Islander East alternative, because it requires a shorter crossing of Long Island Sound, avoids more marine resources, and minimizes onshore impacts in Connecticut. We agree that the ELI alternative appears to be less damaging than the Islander East alternative. It is not clear, however, why this alternative did not become the preferred alternative as it appears to satisfy the project need with less impact on the environment. While the FEIS also "recognize(s) that there are other policy related consideration(s) and/or factors that may make (the ELI) alternative less desirable," these factors are poorly explained in the FEIS. This is unfortunate, especially if they form the rationale for not selecting the ELI alternative as the preferred alternative. We note that the ELI system alternative is the subject of a DEIS released during the comment period for the Islander East FEIS. EPA is currently in the process of reviewing that document.

The FEIS presents new information about project alternatives for review and comment for the first time, and in addition, FERC approved the Islander East project on September 18, 2002. The approval comes almost two weeks in advance of the end of the typical thirty day wait period on the FEIS. As a result, the comments that EPA and other parties are making on the FEIS regrettably were not considered as part of the FERC decision on September 18, 2002. Therefore, unfortunately, because FERC's decision has already been made, the issues that remain unresolved, such as the analysis of alternatives, will need to be addressed in the Clean Water Act Section 404 process administered by the Corps of Engineers. That process will determine whether the ELI alternative, the Islander East alternative, or others are permissible under the Clean Water Act. Because we continue to have environmental concerns about this project we offer the following additional comments about the FEIS for use in future EIS's and for purposes of the 404 permit process.

- **Like the DEIS, the FEIS lacks the detailed information necessary to understand the direct, indirect and secondary impacts to wetlands and waters of the United States associated with the proposed project. Assessment of indirect and secondary impacts is essential to understanding the full scale and significance of environmental impacts, particularly for a project of such large scope and with such a wide range of impact types and locations. This deficiency includes a lack of detailed information on the specific locations and functions and values of the wetlands and aquatic ecosystems impacted--important information to support a complete analysis of alternatives to the proposed project as required by both NEPA and Section 404(b)(1) of the Clean Water Act. In addition, indirect impacts to wetlands and waters of the U.S. remain unspecified in the FEIS, despite our earlier call for this assessment in our comments on the DEIS. This lack of detailed information on the quality of the wetlands and other aquatic ecosystem impacts makes it difficult to determine the relative impacts of various alternatives, or**

whether impacts associated with the proposed project are likely to receive a Clean Water Act Section 404 permit, in accordance with the Clean Water Act Section 404(b)(1) guidelines (40CFR230.10 (c)).¹

Based on information provided in the FEIS, EPA cannot agree with Section 5.1 of the FEIS which concludes that "the construction and operation of the Islander East Pipeline Project would result in limited adverse environmental impacts." Instead, according to the FEIS, construction of the Islander East Project would result in direct impacts to over 3100 acres in open waters including benthic impacts to Long Island Sound (not including impacts to open waters for crossings of less than 100 feet, which could be substantial, and which were not evaluated and accounted for in the FEIS); 125.5 acres of forested habitat, including forested wetlands; and 83.1 acres of open lands, including shrub-scrub and emergent wetlands. Direct impacts alone to 41 forested, shrub-scrub and emergent wetland systems exceed 30 acres, over a crossing distance of 3.5 miles of wetlands. Additional detailed comments about the potential for impacts are provided in the attachment to this letter.

EPA continues to recommend that reductions in the width of right-of-way along the route be pursued to the greatest extent practicable to reduce adverse environmental impacts. A clear explanation of how the sizes for reduced rights-of-way are established would also be of great value as part of this process. This should include a detailed and site specific analysis of route variations (with maps) to avoid and/or minimize impacts to wetlands and aquatic ecosystems.

EPA encourages FERC and the applicant to continue close coordination with land trust/conservation organizations that own/manage sensitive properties along the proposed pipeline route. Creative approaches to prevent/minimize impacts should be considered and made part of a binding and enforceable mitigation package.

We support improvements to the regional energy supply as is evidenced by air quality permits EPA and the states have approved for 26 new power plants over the past five years. Moreover, hundreds of miles of energy transmission lines have been constructed over that time frame. We support future investment in energy infrastructure that improves reliability, reduces costs, and protects the environment. We believe these investments and improvements can occur in a timely manner that results in appropriately sited and environmentally acceptable transmission facilities. Even though in this case a decision has been made to approve the Islander East project, EPA anticipates working closely with our state and federal colleagues, and others, to support a comprehensive consideration of alternatives and analysis of the impacts they may cause to Connecticut, New York and Long Island Sound. EPA looks forward to participating in those

¹EPA intends to offer additional detailed comments on the project and project alternatives in conjunction with the Corps of Engineers permitting process pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

-4-

discussions. Further, we recognize that FERC has recently issued guidance on NEPA prefiling involvement in natural gas projects and we believe this may result in a more conducive environment for streamlined reviews.

Please feel free to contact me or Timothy Timmermann of EPA New England's office of Environmental Review at 617/918-1025 if you wish to discuss these comments further.

Sincerely,

\S\

Robert W. Varney
Regional Administrator

Attachment

cc:

Senator Joseph I. Lieberman
Senator Christopher J. Dodd
Congressman Rob Simmons
Congressman Rosa DeLauro
Congressman Christopher Shays
Governor John G. Rowland
Arthur J. Rocque, Jr., Commissioner, Connecticut DEP
Cori Rose, U.S. Army Corps of Engineers
Mike Ludwig, National Marine Fisheries Service

Additional Detailed Comments on the Islander East Pipeline Project Final Environmental Impact Statement

This attachment details comments, questions and concerns on various elements of the FEIS analysis. In most cases, the concerns are listed with reference to a corresponding page number in the FEIS.

- (2-21) The analysis lacks site specific descriptions of the location, resources and impacts associated with "temporary" workspaces. The FEIS states that workspaces would sometimes "need to be situated less than 50 feet from a waterbody or even within a waterbody." Adverse effects could be relatively long term, rather than temporary, in forested areas.
- (3-43) Sediment sampling was conducted from the HDD exit hole location at approximately one mile intervals for the length of the proposed alignment, for a total of 23 samples. The small number of samples (23) and distances between single samples (one sample per mile) may not adequately represent the sediment chemistry of the Sound along the proposed pipeline route.
- (3-43) It is unclear why BETX analyses conducted only for samples collected in NY and not for CT samples.
- (3-44) IE "submitted site specific computer modeling data that estimates sediment dispersion from construction of the pipeline." These data are not provided with the FEIS document. EPA requests copies of the computer analyses on site specific sediment fate and transport, sediment mound erosion and water quality modeling analyses.
- (3-49) A 25' by 8' trench is described. It is unclear when the trench must be so wide and deep.
- (3-49) The FEIS states that a "majority of trench spoil will be 25 feet to either side of the trench," impacting 183 acres. It is unclear in this context what "majority" might mean (e.g. 51%) and it would be helpful to know how much area be impacted if all of the sidecast material was included in the calculation.
- (3-50) A detailed cross section of the HDD exit basin would help us to better understand the impacts of the basin. It is EPA's understanding that this basin will be constructed nearshore in only 20 feet of water. Sediment mounds defining the basin are estimated in the FEIS to be at least 9 feet tall and 65 feet wide, leaving an average depth of only 11 feet of water, less during low tide events, over the loosely consolidated spoil mounds. Estimates of erosion and sediment resuspension (only 0.5 to 1.0 foot over a three month period) in this shallow water environment, particularly during the stormy and windy winter season, appear to be overly optimistic, and more severe adverse effects than those presented are likely.

- (3-50) The LTFATE model was run with current and wave data collected between February and April, which included a storm characterized as having a recurrence interval of 2 to 2.5 months. Since the project is scheduled to take place over seven months (October through April, Table 2.3-1) it appears that the data set used may not have captured a representative sample of ambient conditions, much less worst case conditions. Indeed, the storm modeled (with a 2 to 2.5 month recurrence interval) likely underestimates the conditions that would be encountered. Model input for ambient conditions (e.g. wave amplitude, wind speed, and current) which allow for some protective margin of safety when evaluating potential adverse environmental impacts would be more appropriate.
- (3-49) It is not clear whether the LTFATE model or some other analysis was conducted to determine sediment fate and transport along the plowed trench? Impacts are characterized as only covering 25 feet on either side of trench. As noted in the FEIS, storm events in the Sound frequently resuspend sediments to depths of 20 meters. Trenching by plow will occur in depths greater than only 20 feet, (approximately 6 meters) according to FEIS, so it is likely that the erosion and resuspension expected in the dredged portion of the trench will also occur in the more nearshore portions of the plowed trench.
- (3-51) Computer modeling of turbidity and other water column effects was apparently not conducted. If not, why not? The analysis of water column effects and water quality impacts should be part of the overall project evaluation.
- (3-51) Despite a lack of modeling or analytical assessment of water quality, the FEIS states that "within the radii predicted by the model for the depositions areas, it is expected that turbidity levels would be locally increased" and "expected to return to background conditions within days of the completion of backfilling the transition basin and trench." The FEIS does not discuss water quality impacts other than turbidity, and provides no analysis to support statements about turbidity. Furthermore, the area of water quality impacts is limited in the discussion to the range of the depositional areas, ignoring the fact that water quality impacts of resuspended sediment plumes, and any associated chemical contamination, could carry far beyond the boundaries of the eroded sediment mounds.
- (3-51) The FEIS states that adverse water quality impacts would last no more than "several months." Even accepting what are likely to be overly optimistic assumptions about erosion and resuspension, as well as the underestimation of the areal extent of the impacts, this implies that the proposed activities could cause or contribute to the violation of water quality standards in Long Island Sound. For example, typical time frames for water quality criteria for aquatic organisms are on the order of hours (typically, one hour) for acute criteria and days (typically, 96 hours) for chronic criteria. A much more rigorous and detailed analysis of sediment fate and transport and the associated water quality impacts is warranted.

- (3-54) Through additional site specific data collection, Islander East has determined that bedrock would not be encountered, FEIS states that no underwater blasting would be expected. We would like to review the information that forms the basis of the conclusion that no blasting will be required for Long Island Sound.
- (3-55) Islander East proposes to use an unspecified biocide in the hydrostatic test water, which would be discharged to Long Island Sound after "neutralization" with hydrogen peroxide. We would like to have more information about the proposed biocide and the conditions under which it is proposed to be discharged to waters of the United States.
- (3-61) The FEIS states that the subsea plow method of trenching would be used as the "primary means of trenching between MPs 12.00 and 32.15 where technically feasible." Under what conditions might the subsea plow not be feasible, other than at intersections with other known infrastructure crossings? Islander East has stated that no bedrock is present, and thus no blasting will take place.
- (3-66) FEIS states that blasting would be required at the crossing of the Muddy River, and goes on to describe the potential resultant fish mortality. The analysis does not describe why other less environmentally damaging alternatives to blasting are not practicable.
- (3-103) Table 3.8.1-3 describes open water impacts totaling 298.6 acres during construction and 27.4 acres during operation of the Islander East pipeline. However, open water crossings are defined in footnote a as surface water crossings greater than 100 feet. It is not clear how are surface water crossings less than or equal to 100 feet are accounted for in the impacts analysis.

The FEIS states that the ELI alternative would eliminate the construction of 10.2 miles of new onshore mainline in Connecticut. The avoidance of onshore pipeline construction in Connecticut would result in the elimination of the direct adverse impacts associated with 16 stream crossings, 41 wetland crossings and would avoid 0.4 miles of land trust property. It would avoid the disturbance of 185 acres of land onshore in Connecticut, including 36.4 acres of forested land and construction within 50 feet of 34 residences.

- (4-4) As proposed in Islander East FEIS, the ELI alternative would reduce the length of Long Island Sound crossed by 5.5 miles. ELI would directly impact 936 of shellfish lease area through trenching for pipe installation, compared to the Islander East proposal, which would directly impact 6141 feet of shellfish lease areas through trenching. Both alternatives would result in substantial areas of bottom disturbance associated with anchor scars and cable sweep: ELI would directly impact 2930 acres, while Islander East would directly impact 3106 acres.

The FEIS states that based on FERC's environmental analysis, "the ELI system Alternative is environmentally preferable" to the Islander East alternative because of reduced onshore and offshore impacts, except for emissions.

(Response to comment F3-11)

EPA continues to believe that more information should be required to describe what constitutes drill failure where Horizontal Directional Drilling (HDD) fails. While we understand that each HDD is unique, it should be clear how each HDD will be approached and how many drill attempts will be made, for example, before failure is determined.

(Drilling Muds)

HDD will result in the generation of drilling muds. Additional analysis to determine whether HDD drilling muds released to Long Island Sound waters can be recaptured and properly disposed is likely to be required during the review of the project under the Clean Water Act.